

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HISER JOHNSTON, JR., et al.,

Plaintiffs

v.

LAS VEGAS METROPOLITAN POLICE
 DEPARTMENT, et al.,

Defendants

Case No. 2:21-cv-00490-APG-NJK

ORDER

This civil rights action was initiated by plaintiffs Hiser Johnston, Jr. and Kathy Prestwich based on the death of Hiser Johnston III while he was in custody at Clark County Detention Center. ECF No. 2, 6-7. I will not screen this case because screening is not authorized by 28 U.S.C. § 1915A(a) or 28 U.S.C. § 1915(e)(2).

A federal court must conduct a preliminary screening in any case in which a prisoner, including a pretrial detainee, brings an action seeking redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Although this case was brought based on Hiser Johnston III's death while in custody, the case was brought by Hiser Johnston, Jr. and Kathy Prestwich, who are not prisoners. As such, a screening order is not authorized by 28 U.S.C. § 1915A(a).

Nor does the screening provision of § 1915(e)(2) apply to this case. Under that statute, the court is authorized to screen a case when the plaintiff is proceeding in forma pauperis. *See* 28 U.S.C. § 1915(e)(2); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (holding that “§ 1915(e) applies to all in forma pauperis complaints, not just those filed by prisoners”).

1 However, in this case the filing fee was paid by the defendants when they removed the case from
2 state court and, therefore, the plaintiffs are not proceeding *in forma pauperis*. ECF No. 1.

3 Accordingly, I do not have authorization to screen the complaint. This case will proceed
4 on the normal litigation track as guided by the Federal Rules of Civil Procedure.

5 I therefore order that the Court will not issue a screening order in this case.

6 I further order that this case shall proceed on the normal litigation track as guided by the
7 Federal Rules of Civil Procedure.

8 DATED THIS 31st day of March 2021.

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UNITED STATES DISTRICT JUDGE